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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 IN RE: TFT-LCD (FLAT PANEL)
13 ANTITRUST LITIGATION
14

No. 3:07-md-1827-SI

MDL No. 1827

15 *Best Buy Co., Inc., et al. v. AU Optronics Corp.,*
16 *et al.*, No. 10-cv-4572 SI
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**HANNSTAR DISPLAY
CORPORATION'S OPPOSITION TO
THE BEST BUY PLAINTIFFS'
MOTION TO AMEND THE
SEPTEMBER 4, 2013 JUDGMENT
AGAINST HANNSTAR TO REFLECT
TREBLE DAMAGES**

1 The motion by Best Buy Co., Best Buy Purchasing LLC, Best Buy Enterprise Services
2 Inc., Best Buy Stores L.P., Bestbuy.com LLC, and Magnolia Hi-Fi, Inc. to amend the September
3 4, 2013 judgment against HannStar Display Corporation (“HannStar”) to reflect treble damages
4 should be denied. There is no reason to “reflect treble damages” because no damages will be
5 awarded to any plaintiff. Before entry of judgment, the damages found by the jury should be
6 trebled and then reduced by the amount of prior settlements. It is undisputed that the settlement
7 offset exceeds the trebled amount of the jury’s Question 9 total, and no plaintiff is therefore
8 entitled to any damage recovery. In addition, no evidence of a joint right to recovery was
9 presented, and there is no basis for entry of a judgment in favor of all plaintiffs.

10 **I. WHEN PRIOR SETTLEMENT PAYMENTS ARE DEDUCTED, THE**
11 **PLAINTIFFS ARE NOT ENTITLED TO ANY RECOVERY.**

12 Judgment in the amount of \$7,471,943, the amount set forth in the jury’s answer to
13 Question 9, was entered in favor of “the Best Buy plaintiffs” and against HannStar on September
14 4, 2013. MDL Dkt. No. 8571. The judgment was entered without consideration of the offset that
15 results from settlements made by the plaintiffs with other parties. HannStar has filed a motion to
16 vacate the judgment because judgment was entered without consideration of the settlement offset.
17 *See* MDL Dkt. No. 8608.

18 After trebling, the amount of the Question 9 total would be \$22,415,829. Settlement
19 payments by other parties in the amount of \$229,000,000, more than ten times the trebled
20 Question 9 total, have been acknowledged by the plaintiffs.¹ *See* Declaration of Roman M.
21 Silberfeld In Support of the Best Buy Plaintiffs’ Motion for Fees and Costs ¶ 12 (MDL Dkt. No.
22 8610-1) (“Silberfeld Decl.”). Under the controlling law described herein, the verdict amount
23 (after trebling) must be reduced by the amounts of the settlements. Therefore, no damages should
24 be awarded when judgment is entered.

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27 ¹ HannStar is prepared to present evidence of additional settlement payments and non-cash
28 consideration not yet acknowledged by the plaintiffs.

1 **II. THE PLAINTIFFS WRONGLY IGNORE THE SETTLEMENT OFFSET.**

2 The plaintiffs provide no case law to support their request to amend the judgment to
3 reflect trebling of the Question 9 total. It is a “fundamental principle that a payment made by a
4 joint tortfeasor diminishes the claim against the remaining tortfeasors.” *Seymour v. Summa Vista*
5 *Cinema, Inc.*, 809 F.2d 1385, 1389 (9th Cir. 1987) (citing Restatement (Second) of Torts § 885(3)
6 (1977)); *Husky Refining Co. v. Barnes*, 119 F.2d 715, 716 (9th Cir. 1941) (stating general rule
7 that “whether the tortfeasors be joint or independent, the injured party is entitled to no more than
8 compensation for his injury; and that consideration received from one, for the release of any
9 claim against him, operates to reduce pro tanto the amount recoverable from the other”); *In re*
10 *Piper Aircraft*, 792 F. Supp. 1189, 1190-91 (N.D. Cal. 1992) (holding that defendant “is entitled
11 to a set off for economic damages previously compensated through the settlement agreement”). It
12 is well settled that the appropriate offset procedure in antitrust cases is first to treble the amount
13 of the damage award and then to deduct any prior settlement amounts from the trebled amount.
14 *See Flintkote Co. v. Lysfjord*, 246 F.2d 368, 298 (9th Cir. 1957) (holding that it is “proper to
15 deduct [the settlement] sum from the trebled amount”). Cases applying *Flintkote* “have
16 uniformly accepted its rule” to deduct settlement amounts from the trebled award. *In re Nat’l*
17 *Mortg. Equity Corp. Mortg. Pool Certificates Sec. Litig.*, 636 F. Supp. 1138, 1151-52 (C.D. Cal.
18 1986) (applying *Flintkote* and finding that “settlement payments should be deducted from the
19 award against the non-settling defendant(s) *after* actual damages are trebled”) (emphasis in
20 original).

21 Before proceeding to trial against Toshiba and HannStar, the plaintiffs settled their claims
22 against numerous other alleged co-conspirators. The plaintiffs acknowledge “settlements with
23 multiple parties under which they will receive a total of \$229 million.” *See Silberfeld Decl.* ¶ 12.
24 Because the deduction of \$229,000,000 in settlements from the \$22,415,829 in trebled damages
25 results in a negative dollar amount, no damages should be awarded. *See William Inglis & Sons*
26 *Baking Co. v. Cont’l Baking Co., Inc.*, 981 F.2d 1023, 1024 (9th Cir. 1992) (determining that set
27 off produced “ultimate judgment” for “no damages”); *In re Hawaii Fed. Asbestos Cases*, 960
28 F.2d 806, 809 (9th Cir. 1992) (reciting that trial court entered final judgment “after reducing the

1 awards to account for amounts received in settlement”); *Holmgren v. State Farm Mut. Auto. Ins.*
2 *Co.*, 976 F.2d 573, 576 (9th Cir. 1992) (stating that trial court entered judgment on jury verdict
3 “after crediting . . . the amount paid to settle [related] suit”).

4 A judgment in the amount of anything more than zero dollars would lead to absurd results:
5 the plaintiffs would have a judgment for tens of millions of dollars that they would have no right
6 to collect because, under undisputed law, HannStar is entitled to offset the trebled damages with
7 hundreds of millions of dollars of settlements. After trebling and offset, simple arithmetic
8 establishes that the recoverable damages amount cannot be anything other than zero.

9 **III. CONCLUSION.**

10 For the above stated reasons, the plaintiffs’ motion to amend the judgment should be
11 denied. HannStar’s Motion to Vacate Judgment Pursuant to Federal Rules of Civil Procedure
12 60(b) should be granted.

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14 Dated: October 1, 2013

FREITAS TSENG & KAUFMAN LLP

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16 /s/ Robert E. Freitas

Robert E. Freitas

17 Attorneys for Defendant
18 HannStar Display Corporation
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